



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No.: 210513-0105]**

**RIN 0648-BK51**

**Fisheries of the Northeastern United States; Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule.

**SUMMARY:** NMFS approves and implements Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan. This action is necessary to set scallop specifications and other measures for fishing years 2021 and 2022, implement measures to protect small scallops, and to reduce bycatch of flatfish. This action is intended to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

**DATES:** Effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. Comments must be received by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** The New England Fishery Management Council developed an environmental assessment for this action that describes the measures in Framework Adjustment 33 and other considered alternatives and analyzes the impacts of the measures and alternatives. Copies of Framework 33, the environmental assessment, the Initial Regulatory Flexibility Analysis (IRFA), and information on the economic impacts of this rulemaking are available upon request from Thomas A. Nies, Executive Director,

New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950

and accessible via the internet in documents available at:

<https://www.nefmc.org/library/framework-33>.

You may submit comments, identified by NOAA-NMFS-2021-0033, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0033 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](https://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at:

<https://www.fisheries.noaa.gov/species/atlantic-sea-scallop#commercial>.

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, 978-281-9233.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. Due to the COVID-19 global pandemic, the annual scallop surveys that were to be conducted in the summer of 2020 were delayed and some canceled outright. Because of this, the Council had to delay final action and was not able to adopt Framework 33 until January 27, 2021. The Council submitted an environmental assessment to NMFS on April 7, 2021, for approval. The 2021 scallop fishing year began on April 1, 2021, and NMFS was unable to implement Framework 33 for the start of the fishing year. To help ensure that Framework 33 would be implemented as close as possible to April 1, 2021, the start of the fishing year, NMFS is implementing Framework 33 through this interim final rule but is also affording the public the opportunity to comment on this action by accepting public comment until [insert date *30 days after date of publication in the Federal Register*].

NMFS has approved all of the measures in Framework 33 recommended by the Council, as described below. The Council reviewed the regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act. This interim final rule implements Framework 33, which sets scallop specifications and other measures for fishing years 2021 and 2022, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2021, measures to reduce bycatch of flatfish, and default specifications for fishing year 2022. The Magnuson-Stevens Act allows NMFS to approve, partially approve, or

disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP.

*Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2021 Fishing Year, and Default Specifications for Fishing Year 2022*

The Council set the OFL based on a fishing mortality (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop management track assessment that was completed in September 2020. The ABC and the equivalent total ACL for each fishing year are based on an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 67.3 million lb (30,517 mt) for 2021 and 61.9 million lb (28,074 mt) for the 2022 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2022 when the Council develops the next framework adjustment.

Table 1 outlines the scallop fishery catch limits derived from the ABC values and the projected landings of the fleet. After deducting the incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the FMP (73 FR 20090; April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (*i.e.*, the larger "trip boat" fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (*i.e.*, the smaller "day boat" fleet); and the remaining 0.5 percent is allocated to

limited access scallop vessels that also have LAGC IFQ permits. Amendment 15 to the FMP (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC ACLs, meaning that the LAGC ACL is equal to the LAGC ACT. For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated fishing mortality applied to the ABC/ACL, now results in an F of 0.39.

**Table 1--Scallop Catch Limits (mt) for Fishing Years 2021 and 2022 for the Limited Access and LAGC IFQ Fleets**

Catch limits	2021 (mt)	2022 (mt) <sup>1</sup>
OFL	45,392	41,926
ABC/ACL (discards removed)	30,517	28,074
Incidental Catch	23	23
RSA	567	567
Observer Set-Aside	305	281
ACL for fishery	29,622	27,203
Limited Access ACL	27,993	25,707
LAGC Total ACL	1,629	1,496
LAGC IFQ ACL (5 percent of ACL)	1,481	1,360
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	148	136
Limited Access ACT	24,260	22,279
APL (after set-asides removed)	17,269	(1)
Limited Access APL (94.5 percent of APL)	16,319	(1)
Total IFQ Annual Allocation (5.5 percent of APL) <sup>2</sup>	950	712
LAGC IFQ Annual Allocation (5 percent of APL) <sup>2</sup>	863	648
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) <sup>2</sup>	86	65

<sup>1</sup> The catch limits for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2022 that will be based on the 2021 annual scallop surveys.

<sup>2</sup> The 2022 IFQ annual allocations are set at 75 percent of the 2021 IFQ Annual Allocations.

This action deducts 1.25 million lb (567 mt) of scallops annually for 2021 and 2022 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million-lb (567-mt) allocation, NMFS has already allocated 310,904 lb (141,024 kg) to previously funded multi-year projects as part of the 2020 RSA awards process. NMFS reviewed proposals submitted for consideration of 2021 RSA awards and announced project selections on March 15, 2021. Details on the 2021 RSA awards can be found on our website here:

*<https://www.fisheries.noaa.gov/new-england-mid-atlantic/science-data/2021-2022-sea-scallop-research-set-aside-projects-selected>.*

This action also deducts one percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 305 mt for 2021 and 281 mt for 2022. In fishing year 2021, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.13 DAS per DAS fished. For access area trips, the compensation rate is 250 lb (113 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 250 lb (113 kg) per trip when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2022 observer set-aside when it develops specific, non-default measures for 2022.

*Open Area DAS Allocations*

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.*, full-time, part-time, and occasional) for 2021 and 2022 (Table 2). The 2021 DAS allocations are the same as those allocated to the limited access fleet in 2020. Framework 33 sets 2022 DAS allocations at 75 percent of fishing year 2021 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2022 specifications action is delayed past the start of the 2022 fishing year. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2020 sub-ACL.

**Table 2--Scallop Open Area DAS Allocations for 2021 and 2022**

Permit Category	2021	2022 (Default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.50

*Changes to Fishing Year 2021 Sea Scallop Access Area Boundaries*

For fishing year 2021 and the start of 2022, Framework 33 keeps the Mid-Atlantic Access Area (MAAA), Nantucket Lightship-South-Deep Access Area (NLS-S-D), and Closed Area I Access Area (CAI) open as access areas. However, Framework 33 will not allocate any additional landings from CAI for the limited access fleet (see below). In addition, this action opens one new area, Closed Area II Access Area (CAII), formerly known as the Closed Area II-Southwest and Extension Closed Area (Table 3).

**Table 3--Closed Area II Scallop Access Area**

Point	N latitude	W longitude	Note
CAII1	41°11'	67°20'	
CAII2	41°11'	66°41'	
CAII3	41°0'	66°41'	
CAII4	41°0'	( <sup>1</sup> )	( <sup>2</sup> )

CAII5	40°40'	( <sup>3</sup> )	( <sup>2</sup> )
CAII6	40°40'	67°20'	
CAII1	41°11'	67°20'	

<sup>1</sup>The intersection of 41°0' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°0' N. lat. and 66°09.33' W. long.

<sup>2</sup>From Point CAII 4 connected to Point CAII5 along the U.S.-Canada Maritime Boundary.

<sup>3</sup>The intersection of 40°40' N. lat. and the U.S.-Canada Maritime Boundary, approximately 40°40' N. lat. and 65°52.61' W. long.

#### *Fishing Year 2021 Sea Scallop Closed Area Boundaries*

Framework 33 will keep two existing closed areas closed, *i.e.*, the Nantucket Lightship-Triangle Scallop Closed Area and the Stellwagen Bank Scallop Closed Area.

In addition, Framework 33 closes two more areas to scallop fishing, *i.e.*, the Nantucket Lightship-North Closed Area (NLS-N) (Table 4) and Closed Area II-East (CAII-E) Closed Area (Table 5), formerly known as the Closed Area II Rotational Area.

Framework 33 is closing NLS-N because there is no longer enough harvestable biomass in the area to support a full trip for limited access vessels. This action is closing CAII-E to protect small scallops that have not yet recruited to the fishery and to reduce bycatch of Georges Bank yellowtail flounder and northern windowpane flounder on Georges Bank.

**Table 4--Nantucket Lightship-North Closed Area**

Point	N latitude	W longitude
NLSN1	40°50'	69°30'
NLSH2	40°50'	69°00'
NLSN3	40°28'	69°00'
NLSN4	40°28'	69°30'
NLSN1	40°50'	69°30'

**Table 5--Closed Area II-East Closed Area**



Point	N latitude	W longitude	Note
CAIIE1	41°30'	67°20'	
CAIIE2	41°30'	( <sup>1</sup> )	( <sup>2</sup> )
CAIIE3	41°00'	( <sup>3</sup> )	( <sup>2</sup> )
CAIIE4	41°00'	66°41'	
CAIIE5	41°11'	66°41'	
CAIIE6	41°11'	67°20'	
CAIIE1	41°30'	67°20'	

<sup>1</sup> The intersection of 41°30' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N lat., 66°34.73' W long.

<sup>2</sup> From Point CAIIE2 connected to Point CAIIE3 along the U.S.-Canada Maritime Boundary.

<sup>3</sup> The intersection of 41°00' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00' N lat. and 66°09.33' W long.

#### *Extension of CAII Seasonal Closure to Mitigate Flatfish Bycatch*

Framework 33 continues the extension of existing seasonal closure in CAII to reduce bycatch of northern windowpane flounder and Georges Bank yellowtail flounder.

The seasonal closure in CAII occurs from August 15-November 15 of each year.

Framework 32 to the Atlantic Sea Scallop FMP (85 FR 17754; March 31, 2020) extended that closure for 15 additional days from August 15-November 30 for the 2020 fishing year only. Framework 33 continues that 15-day extension for fishing year 2021.

#### *Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas*

Table 6 provides the limited access full-time allocations for all of the access areas for the 2021 fishing year and the first 60 days of the 2022 fishing year. These allocations can be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 6) on any one trip.

**Table 6--Scallop Access Area Full-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2021 and 2022**

Rotational access area	Scallop possession limit	2021 Scallop allocation	2022 Scallop allocation (default)
Closed Area II	18,000 lb (8,165 kg) per trip	27,000 lb (12,247 kg)	0 lb (0 kg)
Nantucket Lightship-South-Deep		27,000 lb (12,247 kg)	0 lb (0 kg)
Mid-Atlantic		18,000 lb (8,165 kg)	18,000 lb (8,165 kg)
Total		72,000 lb (32,659 kg)	18,000 lb (8,165 kg)

*Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas*

Table 7 provides the limited access part-time allocations for all of the access areas for the 2021 fishing year and the first 60 days of the 2022 fishing year. These allocations can be landed in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 8) on any one trip.

**Table 7--Scallop Access Area Part-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2021 and 2022**

Rotational access area	Scallop possession limit	2021 Scallop allocation	2022 Scallop allocation (default)
Closed Area II or Nantucket Lightship-South <sup>1</sup>	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg)
Mid-Atlantic		14,400 lb (6,532 kg)	7,200 lb (3,266 kg)
Total		28,800 lb (13,063 kg)	7,200 lb (3,266 kg)

<sup>1</sup> Part-time vessels must choose to take this trip in either Closed Area II or Nantucket Lightship-South-Deep. Once a vessel declares a trip into either area, the entirety of the 14,400-lb (6,532-kg) allocation can only be taken from the same area.

#### *Closed Area I RSA-Only*

Because of the limited amount of biomass in the CAI to support a full limited access trip, Framework 33 will not allocate any landings from CAI to the limited access fleet. CAI will only be available for the LAGC access area trips and RSA compensation fishing.

#### *LAGC Measures*

1. *ACL and IFQ Allocation for LAGC Vessels with IFQ Permits.* For LAGC vessels with IFQ permits, this action implements a 1,481-mt ACL for 2021 and a 1,360-mt default ACL for 2022 (see Table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by the LAGC IFQ fleets. The annual allocation to the LAGC IFQ-only fleet for fishing years 2021 and 2022 based on APL is 863 mt for 2021 and 648 mt for 2022 (see Table 1). Each vessel's IFQ is calculated from these allocations based on APL.

2. *ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action implements a 148-mt ACL for 2021 and a default 136-mt ACL for 2022 (see Table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits is 86 mt for 2021 and 65 mt for 2022 (see Table 1). Each vessel's IFQ is calculated from these allocations based on APL.

3. *LAGC IFQ Trip Allocations for Scallop Access Areas.* Framework 33 allocates LAGC IFQ vessels a fleet-wide number of trips in CAI, NLS-S-D, and MAAA for fishing year 2021 and default trips in the MAAA for fishing year 2022 (see Table 8).

The scallop catch associated with the total number of trips for all areas combined (2,283 trips) for fishing year 2021 is equivalent to the 5.5 percent of total projected catch from access areas.

**Table 8--Fishing Years 2021 and 2022 LAGC IFQ Trip Allocations for Scallop Access Areas**

Scallop access area	2021	2022 <sup>1</sup>
Closed Area I	856	0
Nantucket Lightship-South-Deep	856	0
Mid-Atlantic	571	571
Total	2,283	571

<sup>1</sup> The LAGC IFQ access area trip allocations for the 2022 fishing year are subject to change through a future specifications action or framework adjustment.

4. *Northern Gulf of Maine (NGOM) Total Allowable Catch (TAC)*. This action implements a 175,000-lb (79,379-kg) NGOM TAC for fishing year 2021 and a 74,000-lb (33,566-kg) default NGOM TAC for fishing year 2022. The final rule for NGOM portions of Framework 29 (83 FR 12857; March 26, 2018) developed a methodology for splitting the NGOM TAC between the LAGC and the limited access fleets. Framework 33 continues splitting the TAC using this methodology. The limited access portion of the TAC may only be fished by vessels participating in the RSA program that are participating in a project that has been allocated NGOM RSA allocation. The LAGC portion of the TAC may be fished by NGOM and LAGC IFQ vessels on trips with a 200-lb (90.7-kg) possession limit until the TAC has been harvested. Table 12 describes the division of the TAC for the 2021 and 2022 (default) fishing years.

During the 2019 fishing year the LAGC fleet exceeded its portion of the NGOM TAC by 3,278 lb (1,487 kg). This triggers a pound-for-pound deduction to the LAGC

portion of the NGOM TAC to account for the overage. Because final catch accounting data for the 2019 fishing year was not available in time to implement this deduction in the 2020 fishing year, the LAGC portion of the NGOM TAC for the 2021 fishing year is reduced by 3,278 lb (1,487 kg) to account for the overage. The resulting LAGC NGOM TAC is 119,222 lb (54,078 kg) and the total 2021 NGOM TAC is 171,722 lb (77,892 kg).

**Table 9--NGOM TACs for Fishing Year 2021 and 2022**

Fleet	2021		2022 <sup>1</sup>	
	lb	kg	lb	kg
LAGC	119,222	54,078	72,000	32,659
Limited access	52,500	23,814	2,000	907
Total	171,722	77,892	74,000	33,566

<sup>1</sup>The NGOM TACs for the 2022 fishing year are subject to change through a future specifications action or framework adjustment.

*5. Scallop Incidental Catch Target TAC.* This action implements a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2021 and 2022 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

#### *RSA Harvest Restrictions*

This action allows vessels participating in RSA projects to harvest RSA compensation from the MAAA, NLS-S-D, CAII, CAII and the open area. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 33 prohibits the harvest of RSA from any access areas

under default 2022 measures. At the start of 2022, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2022 specifications.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has preliminarily determined that this interim final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law.

We have examined the impacts of the interim final rule under Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Office of Management and Budget (OMB) has determined that this rule is economically significant, as defined by Executive Order 12866.

As analyzed in Section 6.6.1 Economic Impacts in the Scallop Fishery Management Plan Framework Adjustment 33 Final Submission (<https://www.nefmc.org/library/framework-33>), the costs of this rule are lost consumer and producer surplus resulting from a lower predicted catch in 2021 than predicted for 2020. We estimate a reduction in consumer and producer surplus of \$104.1 million in 2020 in 2021. The benefits of this rule are to prevent overfishing and to minimize bycatch, helping to ensure the sustainability of fishery stocks and minimize adverse ecological impacts. Given data limitations, we are unable to quantify the benefits. The total catch may increase or decrease in future years due to necessary management changes. As noted in Table 1, the catch limits for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. Incremental

changes in total catch from year to year will be analyzed in future rulemakings to assess the relative costs and benefits of each action, consistent with E.O. 12866 and Circular A-4.

**Table 1: Summary of Benefits, Costs and Transfers of Interim Final Rule in Millions of \$ 2020.**

Category		Estimate	Units	Notes
<b>Benefits</b>	Monetized	0	2020\$, mil	
	Quantified	0	Lbs, mil	
	Qualitative	Prevent overfishing and minimize bycatch in accordance with the Magnuson Stevens Act and governing Fishery Management Plan		
<b>Costs</b>	Monetized	-104.1	2020\$, mil	<i>Estimated annual reduction in Total Benefits stemming from Proposed Action, relative to TB estimated for prior fishing year (baseline).</i>
	Quantified	-11.5	Lbs, mil	<i>Estimated annual reduction in catch from Proposed Action, relative to catch estimated for prior fishing year (baseline).</i>
	Qualitative			
<b>Transfers</b>	Monetized	0	2020\$, mil	
	Quantified	0	Lbs, mil	
	Qualitative			<i>No intra-industry transfers are predicted under the Proposed Action.</i>

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act or CRA), 5 U.S.C. 801-808, the Office of Information and Regulatory Affairs has determined that this is a major rule. *See* 5 U.S.C. 804(2). The CRA's 60-day delay in the effective date for major rules is not applicable, however, because this rule establishes a regulatory program for a commercial activity related to fishing. *See* 5 U.S.C. 808(1).

The Assistant Administrator for Fisheries has determined that it is contrary to the public interest to provide for prior notice for this action. It is necessary to implement the measures of this rule in an expedited manner to achieve conservation objectives for the scallop fishery and certain fish stocks. Similarly, the need to implement these measures in a timely manner constitutes good cause, under authority contained in 5 U.S.C.

553(d)(3), to waive the 30-day delay in the date of effectiveness and to make Framework 33 measures effective as soon as possible.

In the summer of 2020, due to the COVID-19 global pandemic, certain of the annual scallop surveys were delayed while others were canceled. Because of this, the Council had to delay final action on Scallop Framework 33 until its January 2021 meeting. The 2021 scallop fishing year began on April 1, 2021, and NMFS was unable to approve and implement final Framework 33 measures for the start of the fishing year. On April 1, default specifications went into place for the scallop fishery. Framework 32 set fishing year 2021 default specifications that were intentionally conservative.

Because most of the default specifications are more conservative than those that would be implemented in Framework 33, delaying the implementation of this action to allow prior notice and opportunity for public comment or a 30-day delay in effective date would be contrary to the public interest because it would cause the scallop fleet to lose the positive economic benefits of immediate implementation and could also negatively impact the access area rotation program by delaying fishing in access areas that should be available. There is good cause to immediately implement the rule rather than delay the effective date by 30-days because this action provides full-time vessels with an additional 6 DAS (24 DAS total) and 54,000 lb (24,494 kg) in access area allocations (72,000 lb (32,659 kg) total) to each full-time limited access vessel. Further, LAGC IFQ vessels will receive an additional 27-mt (950-mt total) allocation and 1,712 access area trips spread out across 3 access areas (2,283 trips total). Framework 33 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time for this action to be forwarded to NMFS and implemented by April 1, 2021, the beginning of the scallop fishing year. Additionally, because this rule relieves restrictions



by increasing these allocations, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(d)(1).

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act because prior notice and opportunity for public comment is not required.

This interim rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

#### **List of Subjects 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 14, 2021.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEAST UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

#### **Subpart A—General Provisions**

2. In § 648.14, revise paragraphs (i)(2)(vi)(B) and (i)(3)(v)(E) to read as follows:

#### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(B) Transit the Closed Area II Scallop Rotational Area or the Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

(3) \* \* \*

(v) \* \* \*

(E) Transit the Closed Area II Scallop Rotational Area or Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

#### **Subpart D—Management Measures for the Atlantic Sea Scallop Fishery**

3. In § 648.51, revise paragraph (f)(1) to read as follows:

##### **§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(f) \* \* \*

(1) *Restrictions.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59, may not fish for scallops with a trawl net in the Closed Area 1, Closed Area II, Closed Area II-East, and Nantucket Lightship-South-Deep Rotational Areas specified in § 648.60.

\* \* \* \* \*

4. In § 648.53, revise paragraphs (a)(8), (b)(3), and (c)(1) and (2) to read as follows:

**§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).**

(a) \* \* \*

(8) *Scallop fishery catch limits.* The following catch limits will be effective for the 2021 and 2022 fishing years:

Table 1 to Paragraph (a)(8)--Scallop Fishery Catch Limits

Catch limits	2021 (mt)	2022 (mt) <sup>1</sup>
OFL	45,392	41,926
ABC/ACL (discards removed)	30,517	28,074
Incidental Catch	23	23
RSA	567	567
Observer Set-Aside	305	281
ACL for fishery	29,622	27,203
Limited Access ACL	27,993	25,707
LAGC Total ACL	1,629	1,496
LAGC IFQ ACL (5 percent of ACL)	1,481	1,360
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	148	136
Limited Access ACT	24,260	22,279
APL (after set-asides removed)	17,269	(1)
Limited Access APL (94.5 percent of APL)	16,319	(1)
Total IFQ Annual Allocation (5.5 percent of APL) <sup>2</sup>	950	712

LAGC IFQ Annual Allocation (5 percent of APL) <sup>2</sup>	863	648
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) <sup>2</sup>	86	65

<sup>1</sup> The catch limits for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2022 that will be based on the 2021 annual scallop surveys. The 2022 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

<sup>2</sup> As specified in paragraph (a)(6)(iii)(B) of this section, the 2022 IFQ annual allocations are set at 75 percent of the 2021 IFQ Annual Allocations.

(b) \* \* \*

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2021 and 2022 are as follows:

Table 2 to Paragraph (b)(3)--Scallop Open Area DAS Allocations

Permit Category	2021	2022 <sup>1</sup>
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

<sup>1</sup> The DAS allocations for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. The 2022 DAS allocations are set at 75 percent of the 2021 allocation as a precautionary measure.

\* \* \* \* \*

(c) \* \* \*

(1) *Limited access AM exception.* If NMFS determines that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.39, the AM specified in paragraph (c) of this section shall not take effect. The fishing mortality rate of 0.39 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.45.

(2) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet exceeded its sub-ACL, defined in paragraph (a)(5) of this section, by July of the fishing year following the year

for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the sub-ACL for the limited access fleet was exceeded, and the number of landings in excess of the sub-ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.39. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the Administrative Procedure Act (APA), the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

\* \* \* \* \*

**§ 648.56 [Amended]**

5. In § 648.56, remove paragraph (i).
6. In § 648.59:
  - a. Revise paragraph (a)(2);
  - b. Lift the suspension of paragraphs (b)(3)(i)(B)(1)(ii) and (b)(3)(i)(B)(2)(ii);
  - c. Revise paragraph (b)(3)(i)(B);
  - d. Remove and reserve paragraph (b)(3)(ii)(A)(2);
  - e. Revise paragraph (b)(3)(ii)(B);
  - f. Lift the suspension of paragraph (c);
  - g. Revise paragraphs (c), (e), (g)(1), and (g)(3)(v); and
  - h. Remove paragraph (h).

The revisions read as follows:

**§ 648.59 Sea Scallop Rotational Area Management Program and Access Area**

**Program requirements.**

(a) \* \* \*

(2) *Transiting a Closed Scallop Rotational Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area or the Closed Area II-East Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2021 and 2022 fishing years:

(1) *Full-time vessels.* (i) For a full-time limited access vessel, the possession limit and allocations are:

Table 1 to Paragraph (b)(3)(i)(B)(1)(i)

Rotational access area	Scallop possession limit	2021 Scallop allocation	2022 Scallop allocation (default)
------------------------	--------------------------	-------------------------	-----------------------------------

Closed Area II	18,000 lb (8,165 kg) per trip	27,000 lb (12,247 kg)	0 lb (0 kg).
Nantucket Lightship-South-Deep	18,000 lb (8,165 kg) per trip	27,000 lb (12,247 kg)	0 lb (0 kg).
Mid-Atlantic	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	18,000 lb (8,165 kg).
Total		72,000 lb (32,659 kg)	18,000 lb (8,165 kg).

(ii) [Reserved]

(2) *Part-time vessels.* (i) For a part-time limited access vessel, the possession limit and allocations are as follows:

Table 2 to Paragraph (b)(3)(i)(B)(2)(i)

<b>Rotational access area</b>	<b>Scallop possession limit</b>	<b>2021 Scallop allocation</b>	<b>2022 Scallop allocation (default)</b>
Closed Area II or Nantucket Lightship-South <sup>1</sup>	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg)
Mid-Atlantic	14,400 lb (6,532 kg) per trip	14,400 lb (6,532 kg)	7,200 lb (3,266 kg)
Total		28,800 lb (13,063 kg)	7,200 lb (3,266 kg)

<sup>1</sup> Part-Time vessels must choose to take this trip in either Closed Area II or Nantucket Lightship-South-Deep. Once a vessel declares a trip into either area, the entirety of the 14,400-lb (6,532-kg) allocation can only be taken from the same area.

(ii) [Reserved]

(3) *Occasional limited access vessels.* (i) For the 2021 fishing year only, an occasional limited access vessel is allocated 6,000 lb (2,722 kg) of scallops with a trip possession limit at 6,000 lb of scallops per trip (2,722 kg per trip). Occasional limited

access vessels may harvest the 6,000 lb (2,722 kg) allocation from the Mid-Atlantic, Nantucket Lightship-South-Deep, or Closed Area II Access Area.

(ii) For the 2022 fishing year, occasional limited access vessels are allocated 1,500 lb (680 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 1,500 lb of scallops per trip (680 kg per trip).

(ii) \* \* \*

(B) *Part-time limited access vessels.* The owner of a vessel issued a part-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another part-time vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B)(2) of this section. For example, if the access area trip possession limit for part-time limited access vessels is 14,400 lb (6,532 kg), a part-time limited access vessel may exchange no more or less than 14,400 lb (6,532 kg), from one access area for no more or less than 14,400 lb (6,532 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time limited access vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A part-time limited access vessel owner



may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

\* \* \* \* \*

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2020, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2021 (April 1, 2021 through May 30, 2021).

\* \* \* \* \*

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2021 and 2022 are:

(1) 2021: Mid-Atlantic, Nantucket Lightship-South-Deep, Closed Area I, and Closed Area II Scallop Rotational Areas.

(i) For fishing year 2021, vessels may only harvest RSA compensation from Closed Area II from June 1, 2021 through August 14, 2021.

(ii) [Reserved]

(2) 2022: No access areas.

\* \* \* \* \*

(g) \* \* \*

(1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (2), and (6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, Closed Area II-East, and Nantucket Lightship-South-Deep Scallop Rotational Areas specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

\* \* \* \* \*

(3) \* \* \*

(v) *LAGC IFQ access area allocations*. The following LAGC IFQ access area trip allocations will be effective for the 2021 and 2022 fishing years:

Table 3 to Paragraph (g)(3)(v)

Scallop access area	2021	2022 <sup>1</sup>
Closed Area I	856	0
Nantucket Lightship-South-Deep	856	0

Scallop access area	2021	2022 <sup>1</sup>
Mid-Atlantic	571	571
Total	2,283	571

<sup>1</sup> The LAGC IFQ access area trip allocations for the 2022 fishing year are subject to change through a future specifications action or framework adjustment.

\* \* \* \* \*

7. In § 648.60:

- a. Revised paragraph (b), (c), and (d);
- b. Lift the suspension of paragraph (f);
- c. Remove and reserve paragraph (f); and
- d. Remove paragraph (i).

The revisions read as follows:

**§ 648.60 Sea Scallop Rotational Areas.**

\* \* \* \* \*

(b) *Closed Area II Scallop Rotational Area*--(1) *Closed Area II Scallop Rotational Area boundaries.* The Closed Area II Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 2 to Paragraph (b)(1)

Point	N latitude	W longitude	Note
CAII1	41°11'	67°20'	
CAII2	41°11'	66°41'	
CAII3	41°0'	66°41'	

Point	N latitude	W longitude	Note
CAII4	41°0'	( <sup>1</sup> )	( <sup>2</sup> )
CAII5	40°40'	( <sup>3</sup> )	( <sup>2</sup> )
CAII6	40°40'	67°20'	
CAII1	41°11'	67°20'	

<sup>1</sup> The intersection of 41°0' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°0' N lat. and 66°09.33' W long.

<sup>2</sup> From Point CAIISWE 4 connected to Point CAIISWE5 along the U.S.-Canada Maritime Boundary.

<sup>3</sup> The intersection of 40°40' N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40' N lat. and 65°52.61' W long.

(2) *Season.* (i) A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Scallop Rotational Area, defined in paragraph (b)(1) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(ii) For the 2021 scallop fishing year, a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Scallop Rotational Area, defined in paragraph (b)(1) of this section, during the period of November 16 through November 30, unless transiting pursuant to § 648.59(a).

(c) *Closed Area I Scallop Rotational Area.* The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 3 to Paragraph (c)

Point	N latitude	W longitude
-------	------------	-------------

CAIA1	41°30'	68°30'
CAIA2	40°58'	68°30'
CAIA3	40°54.95'	68°53.37'
CAIA4	41°30'	69°23'
CAIA1	41°30'	68°30'

(d) *Closed Area II-East Scallop Rotational Area.* The Closed Area II-East Scallop Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 4 to Paragraph (d)

<b>Point</b>	<b>N latitude</b>	<b>W longitude</b>	<b>Note</b>
CAIIE1	41°30'	67°20'	
CAIIE2	41°30'	( <sup>1</sup> )	( <sup>2</sup> )
CAIIE3	41°00'	( <sup>3</sup> )	( <sup>2</sup> )
CAIIE4	41°00'	66°41'	
CAIIE5	41°11'	66°41'	
CAIIE6	41°11'	67°20'	
CAIIE1	41°30'	67°20'	

<sup>1</sup> The intersection of 41°30' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N lat., 66°34.73' W long.

<sup>2</sup> From Point CAIIE2 connected to Point CAIIE3 along the U.S.-Canada Maritime Boundary.

<sup>3</sup> The intersection of 41°00' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00' N lat. and 66°09.33' W long.

\* \* \* \* \*

8. In § 648.62, revise paragraph (b)(1) and (2), (c), and (e) to read as follows:

**§ 648.62 Northern Gulf of Maine (NGOM) Management Program.**

\* \* \* \* \*

(b) \* \* \*

(1) The LAGC and the limited access portions of the annual hard TAC for the NGOM 2021 and 2022 fishing years are as follows:

Table 1 to Paragraph (b)(1)

Fleet	2021		2022 (default)	
	Lb	kg	lb	kg
LAGC	119,222	54,078	72,000	32,659
Limited access	52,500	23,814	2,000	907
Total	171,722	77,892	74,000	33,566

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued an LAGC or limited access scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the vessel's respective portion(s) of the NGOM scallop total allowable catch in accordance with paragraph (b)(1) of this section has been reached, unless the vessel is participating in the scallop RSA program as specified in § 648.56, has been allocated NGOM RSA pounds, and the limited access portion of the NGOM TAC has not been reached. Once the LAGC share of the NGOM TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM,

unless participating in the state waters exemption program as specified in § 648.54. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

\* \* \* \* \*

(c) *VMS requirements.* Except scallop vessels issued a Federal scallop permit pursuant to § 648.4(a)(2)(i) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM or IFQ permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

\* \* \* \* \*

(e) *Stellwagen Bank Scallop Closed Area.* (1) Unless a vessel has fished for scallops outside of the Stellwagen Bank scallop management area and is transiting the area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued a Federal scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the Stellwagen Bank Scallop Closed Area.

(2) The Stellwagen Bank Scallop Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 2 to Paragraph (e)(2)

<b>Point</b>	<b>N latitude</b>	<b>W longitude</b>
SB1	42°26'	70°27'
SB2	42°26'	70°15'
SB3	42°20'	70°15'
SB4	42°20'	70°27'
SB1	42°26'	70°27'

[FR Doc. 2021-10553 Filed: 5/18/2021 8:45 am; Publication Date: 5/19/2021]